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HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 876 OF 2005

APPELLANT Ku. Dipti Sahu
Claimant

Versus

RESPONDENTS Kumbha Lal Sahu & others
Driver

POST FOR JUDGMENT ON 20th June, 2007

Sd/-
DHIRENDRA MISHRA
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 876 OF 2005

APPELLANT Claimant	Ku. Dipti Sahu, D/o Shri Purshottam Lal Sahu, aged about 4 years, being minor through her father Shri Purshottam Lal Sahu, R/o Village Paneka, Police Station Basantpur, Distt. Rajnandgaon, Chhattisgarh.
Versus	
RESPONDENTS Driver	1.Kumbha Lal Sahu, S/o Pitambar Sahu, aged about 52 years, R/o Village Bankal, P.S. Basantpur, Distt. Rajnandgaon, Chhattisgarh.
Owner	2. Shridhar Mudliyar, S/o V.T. Panduran Mudliyar, aged about 45 years, R/o Stadium Road, Rajnandgaon, Distt. Rajnandgaon (C.G.)
	3. The United India Insurance Co. Ltd. through Branch Manager, Kamthi Line, Rajnandgaon, Distt. Rajnandgaon (C.G.)

Present:

Mr. Anand Shukla, Advocate for the appellant.
None for respondents No.1 & 2.
Mr. Sanjay Shyam Agarwal, Advocate for respondent No.3.

J U D G M E N T

(Delivered on 20/06/2007)

Dhirendra Mishra, J

1) This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') is directed against the award dated 8th April, 2005 passed in Claim Case No.83/04 by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (C.G.) whereby a sum of Rs.55,837/- with interest @ 6% from the date of filing of application has been awarded to the claimant/appellant

herein as compensation towards injuries sustained by her in a motor accident dated 2.4.2004.

2) On 2.4.2004 at about 1.30 p.m. when Ku. Dipti, a girl aged 4 years, was playing before her house, respondent No.1 driving rashly & negligently the truck bearing registration number CG08-ZC-0803, owned by respondent No.2 & insured by respondent No.3 for the relevant period, dashed with Ku. Dipti as a result of which she sustained grievous injuries over her right leg and also on her private parts and anus. She was immediately rushed to District Hospital, Rajnandgaon where doctors considering the seriousness of injuries referred her to Chandulal Chandrakar Memorial Hospital, Bhilai. She remained hospitalized up to 30.4.2004 and during that period her private parts were operated upon and grafting of skin was also done over her right leg. However, she has sustained permanent deformity over her private part, anus & opening of ovary.

3) Appellant claimed compensation of Rs.70,000/- towards expenditure in treatment, Rs.50,000/- towards future treatment, Rs.7,000/- towards incidental expenditure on nutritious diet etc.; Rs.1,00,000/- towards mental & physical agony suffered by the appellant and her family members; Rs.10,000/- as compensation towards attendant who accompanied the appellant; Rs.2,000/- towards future expenses in this regard & Rs.5,000/- towards permanent disability and thus a total sum of Rs.3,07,000/- was claimed.

4) Respondent No.1 herein was proceeded ex-parte. Respondent No.2 in his reply denied that the accident occurred because the vehicle was being driven rashly & negligently by respondent No.1. Pleadings regarding injuries and expenditure in treatment of appellant have also been denied and it was pleaded that the vehicle was insured by respondent No.3 for the relevant period and therefore, liability of compensation, if any, could be of respondent No.3.

5) Respondent No.3 has also denied in its reply the pleadings of applicant regarding negligence in driving of respondent No.1 and the averments that wheels of truck ran over the thigh of Deepti resulting in serious injuries. Pleadings about claims towards expenditure on treatment and other heads have also been denied.

6) The tribunal, after appraisal of the evidence available on record, has held that respondent No.1 rashly & negligently driving the truck had caused the accident as a result of which Deepti sustained injuries. The tribunal has further assessed that Deepti is entitled for a compensation of Rs.10,000/- towards physical & mental agony suffered by her due to injuries, Rs.5,000/- as expenditure towards other heads and Rs.40,837/- towards actual expenditure incurred by the claimant in her treatment and thus awarded a total sum of Rs.55,837/- as compensation.

7) The sole question raised on behalf of the appellant is that the compensation awarded by the tribunal is wholly inadequate. It was contended by the appellant that the girl aged 4 years has sustained deformity of permanent nature over her anus, private part and opening of ovary. She had also sustained grievous injuries over various parts of body. 4-5 minor operations and two major operations were conducted over her body. She was hospitalized for a month. Doctor had opined that because of injuries appellant will face problems during intercourse and delivery in future. However, learned claims tribunal has not taken into consideration the above aspects while assessing the compensation for which the claimant was entitled.

8) The claimant has filed and proved the cash receipts (Ex.P-1, admission & discharge ticket (Ex.P-2), bed head ticket of Chandulal Chandrakar Memorial Hospital, Bhilai (Ex.P-3), certificate issued by hospital (Ex.P-4) and cash receipts (Ex.P-5 to Ex.P-47).

9) Dr. S. Dutta, Senior Surgical Specialist, Chandulal Chandrakar Memorial Hospital, Bhilai has been examined as AW-1, who has stated that Deepti was admitted by her father on 2.4.2004, she remained hospitalized up to 30.4.2004. Deepti had suffered crushed injuries over her right lower limb including groin, vulva and perineal area. Buttock bones and bones of right leg were also crushed, the nature of injuries sustained by Deepti was grievous. 4-5 minor operations & two major operations were conducted over her person. The wounds have recovered, however, there is deformity in urinary orifice, anus and opening of ovary and on remaining place minor deformities. He has further stated that because of injuries over the private parts, she is likely to face problem during intercourse and delivery in future. As per certificate of Ex.P-4, which has been issued on 25.1.2005, intensive treatment followed by plastic surgery has been advised. Further corrective surgery in later life over vulva and perineal area has also been advised. It has been further stated that muscular weakness due to crush excised muscles is likely to remain life long. Patient (Claimant) has been recommended high protein diet as per Ex.P-7.

10) Purshottam Lal, father of Deepti, has been examined as AW-2, who has stated that because of injuries his daughter limps while walking and she complains difficulty & pain in passing stool and urine. He has further stated that because of deformity in her private parts difficulty may arise in bearing child and they may face difficulties in marrying her.

11) The Division Bench of Allahabad High Court in the matter of **Sushila Pandey Vs. New India Assurance Co. Ltd.** reported in **AIR 1983 Allahabad 69** after considering the various English & Indian judgments held that "in bodily injury cases where the injured survives and is disabled, compensation awarded is higher than in cases of death because compensation is to be given to a living victim who is rendered disabled and is not able to lead normal life or to

carry on his avocation or enjoy amenities of life. In cases where the injured incurs any disability on account of which the claimant cannot walk or ride a bicycle or attend to his personal needs or if he has to be constantly under medical care, he is entitled to compensation in respect of each of those items in addition to his economic loss. Damages which are awarded in the form of compensation to a claimant are of two kinds; Pecuniary, which are also known as special damages, and non-pecuniary, which are classified as general damages. Pecuniary damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money. Non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation. Pecuniary damages general include four sub-heads, (i) expenses incurred by the claimant in respect of injury which may include medical expenses, special diet, cost of nursing or attendant; (ii) loss of earning or profit up to the date of trial; (iii) loss of earning capacity which may include incapability to earn in future years and also incapability in the labour market, loss of earning on account of termination of service or discontinuance of any trade, business or profession, and (iv) other material loss which may require any special treatment or aid to the injured or claimant for the rest of life. Non-pecuniary loss (general damages) include a number of elements. Generally these include four sub-heads; (i) damages for mental and physical shock, pain, suffering, already suffered by the claimant or likely to suffer in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters e.g. on account of injury the claimant may not be able to walk, run sit or loss of marriage prospects, sexual intercourse and loss of other amenities in life; (ii) damages for the loss of expectation of life e.g. on account of injury the normal longevity of the person concerned is shortened; and (iv) inconvenience, hardship, discomfiture, disappointment, frustration

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and mental stress in life. The heads and sub-heads as mentioned above are not exhaustive in nature."

12) Similar view has been expressed by the Hon'ble Apex Court in Para 9 of the judgment delivered in the matter of **R.D. Hattangadi Vs. M/s Pest Control (India) Pvt. Ltd. and others** reported in **AIR 1995 Supreme Court 755**, which reads as under:

> "while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

13) From the evidence available on record, which has been referred in detail in foregoing paragraphs, this Court has already observed that a girl aged 4 years has suffered deformity of permanent nature over her private part, anus and opening of ovary and there is an opinion of

the doctor that she may face problems at the time of intercourse and delivery in future. She underwent 4-5 minor operations and two major operations during the period of her hospitalization about a month. Evidence is also available on record that skin grafting over her right leg was done after excising from the left leg. Thus, from the evidence available on record, a poor girl has already suffered lot of trauma and pain during her treatment and the doctor has also opined that she may require corrective surgery and plastic surgery in future and that weakness of her muscles is to remain throughout her life.

14) In view of the medical opinion of Dr. S. Dutta (AW-1), which is based on documents available on record, the apprehension of Purshottam Sahu, father of appellant, that because of permanent deformity Deepti may face problems in getting married as also in bearing child and she will have to live with the discomfiture throughout her life, cannot be considered unfounded. The tribunal ignoring medical evidence available on record, which is also supported by treatment papers and certificate, has allowed Rs.40,837/- towards medical expenses, Rs.10,000/- towards physical & mental suffering, Rs.5,000/- towards other expenditure which is grossly inadequate. No compensation has been awarded for further treatment and loss of amenities of life on the ground that permanent disability has not been proved.

15) Thus, on the principle of law laid down in the matters of Sushila Pandey (Supra) & R.D. Hattangi (Supra), which has been reproduced herein above, and taking into consideration the nature of injuries suffered by the appellant, who is a girl aged 4 years, and further considering the treatment received by her so far and the treatment which she may require to undergo in future, I am of the considered opinion that in addition to the amount already awarded to the appellant, the amount under following heads should also be awarded:-

1.	Future treatment expenses :	Rs.50,000/-
2.	General damages, which the claimant is likely to suffer in future towards loss of amenities of life	Rs.50,000/-

16) In the result, the appeal is allowed and the award of the tribunal is hereby modified, as above. The appellant is entitled to recover additional sum of Rs.1,00,000/- (Rupees One Lac only) as compensation from the respondents. The Insurance Company shall deposit the additional amount of compensation before the claims tribunal within a period of one month from today. On such deposit being made, the M.A.C.T. shall deposit Rs.75,000/- in a fixed deposit scheme of a nationalized bank for the period till the appellant attains the majority.

Sd/-
DHIRENDRA MISHRA
Judge

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